IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

JUDGMENT

Smt. Sugana Devi vs. Legal Representatives of Shri Bheru Lal.

S.B. Civil Second Appeal No.96/1993 under Section 100 C.P.C. against the judgment and decree dated 15.5.1992 passed by the learned Addl. District Judge No.3, Jodhpur in Civil Appeal (Decree) No. 162/1989.

Date of Judgment: March 15th,2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. S.M. Bhansali & Mr. S.R. Jain, for the appellant.
Mr. M.C.Bhoot, for the respondent.

BY THE COURT:

This Second Appeal is against the judgment and decree of the first appellate court dated 15.5.1992 by which the first appellate court allowed the appeal of the respondent-tenant and set aside the judgment and decree of the trial court dated 23.7.1987 by which the trial court decreed the suit of the plaintiff for eviction against the tenant on the

ground that the defendant-respondent-tenant has not been using the premises in question since last more than six months for the purpose for which the premises was let out to the appellant.

2. Brief facts of the case are that the plaintiff filed the suit for eviction on the ground that the suit property was let out to the defendant-tenant for a fixed period upto 23.5.1984 and as per the tenancy agreement, the plaintiff is entitled to recover the possession from the defendant-tenant. The plaintiff also pleaded that the plaintiff has reasonable bonafide necessity for the shop in dispute and the third ground was that the defendant failed to use the premises since more than last six months for the purpose for which it was let out.

3. The trial court held that in view of the statements of the plaintiff's son P.W.-1 Mangi Lal and other witnesses,namely, P.W.-1 Sampat Singh, P.W.-3 Rameshar and P.W.-4 Kalu Singh, the plaintiff discharged his burden of proving the issue of non-user of the suit premises by the defendant and, therefore, the onus was upon the defendant to prove that he was using the premises for the purpose for which it was let out. It will be worthwhile to mention here that the plaintiff in his plaint, specifically pleaded that the defendant is not doing any business in the premises in question and since last six months,

the defendant is not doing the job of dyeing and printing for which the shop was taken on rent. The defendant in his written statement, after denying the allegations of the plaintiff, very specifically pleaded that in the shop the work of only printing is done and not of dyeing (दुकान में सिर्फ छपाई का काम होता है न कि रंगाई का).

4. Since the suit was decreed by the trial court only on one ground of eviction which is the ground (j) provided in sub-section (1) of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, therefore, the appellate court also had one issue to decide and that was issue no.5. The appellate court held that P.W.-1 Mangi Lal in his statement, has not clearly stated that the shop remained closed continuously for six months immediately preceding the date of the filing of the suit or the suit premises has not been used for the purpose for which it was taken on rent by the defendant. The witness P.W.-1 Mangi Lal only stated that the defendant is not doing any business in the suit shop and he opens the shop casually, therefore, the plaintiff failed to prove that the suit shop remained closed for six months or has not been used for six months continuously by the defendant. The first appellate court also observed that the plaintiff's witnesses though stated that the suit shop is closed since last more than 1-1/2 year and the defendant is not doing any business in the suit shop but the statements of the

plaintiff's witnesses find no support from the statement of the plaintiff's son P.W.-1 Mangi Lal. The first appellate court also observed that even in case the statement of witnesses are taken to be true then why the defendant was paying the rent of the shop without doing any business in the shop, cannot be understood. Apart from above, the first appellate court in detail, considered the previous litigation and the dispute between the landlord and the tenant and in view of the above, reached to the conclusion that the plaintiff wants to evict the tenant by all means.

5. This Court on 3.2.1993 framed the following substantial questions of law while admitting the second appeal:-

> "(1) Whether in order to raise a ground of eviction under Section 13(1)(j), the necessary ingredient is a closer of premises or cession of use of the premises for the purpose for which they were let out for a continuous period of 6 months immediately preceding the date of the suit ?
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> (2) Whether there was any material on the basis of which findings on issue no.5 could have been reversed by the lower appellate court ?"

6. According to the learned counsel for the appellant, the defendant was and today is not doing any business in the suit shop. It is also submitted that the first appellate court committed serious error in

reversing the finding recorded by the trial court. According to the learned counsel for the appellant, the respondent-defendant failed to produce any evidence to prove his business in the suit shop. It is also submitted that the defendant himself in his written statement specifically admitted that he was doing the business of only printing in the shop in dispute whereas the defendant in his statement, categorically and unambiguously admitted that the work of printing is done at the defendant's house and no work of printing is being done in the shop in dispute. According to the learned counsel for the appellant, there were all material evidence available and those evidence were considered by the trial court and the trial court recorded the finding of fact in favour of the plaintiff on issue no.5 whereas the first appellate court failed to look into the material available on record, therefore, even observed that since the defendant is doing the business of dyeing and printing in the shop and for that, it is not necessary to keep the account books whereas the case of the defendant in the written statement itself was that he was doing the business of only printing and not of dyeing in the shop and the defendant in his own statement before the trial court itself did not state that he was not keeping the account books. He only stated that he has no account books. His this stand, on the face is false as he admitted that he received the goods from the businessman through the bank-builty and he also gave names of his

banks- State Bank of Bikaner and Jaipur and Punjab National Bank. According to the learned counsel for the appellant, first appellate court influenced by the previous litigation between the plaintiff and defendant, reversed the judgment and decree of the trial court.

7. The learned counsel for the respondent vehemently submitted that there is no illegality committed by the first appellate court in reversing the judgment and decree passed by the trial court. It is submitted that the plaintiff failed to plead and prove that the defendant failed to use the shop in question continuously for six months and doing no business in the shop. The learned counsel for the respondent submitted that plaintiff's son P.W.-1 Mangi Lal in his cross-examination, admitted that he submitted complaint under Section 107, Cr.P.C. and also filed one suit against defendant-tenant. He also admitted that the defendant Bheru Lal also filed the suit against Mangi Lal and his family members and in the suit, there were allegations of throwing out the goods of the defendant Bheru Lal and in that suit, receiver was appointed by the court and thereafter the plaintiff paid Rs.4000/- as damages to the defendant for settlement. The learned counsel for the respondent submitted that the incident of throwing defendant's goods from the shop was of the month of October, 1982 and the possession was delivered to the defendant Bherulal by the order of

the court and for that purpose even police assistance was provided by the court to the defendant-respondent. The plaintiff after failing in evicting the petitioner illegally, filed the present suit in the year 1984 only. Apart from above, according to the learned counsel for the respondent, in fact the burden was upon the plaintiff to prove that the defendant was not using the shop in question for continuously six months for the purpose for which it was taken on rent.

8. I considered the submissions of the learned counsel for the parties and perused the record.

9. So far as the tenancy is concerned, there is no dispute and according to the defendant, the suit shop was taken on rent in the month of March 1979 and according to the defendant, the room situated behind the shop was handed over to the plaintiff by the defendant on 24.6.1983. The substantial question of law no.1 framed by this Court is with respect to the question whether closer of premises is necessary ingredient for passing the decree under Section 13(1)(j), or cession of the use of the premises alone can be a ground for passing the decree. The substantial question no.2 is with respect to the question whether there was any material on the basis of which the first appellate court could have reversed the finding recoded by the trial court on issue no.5

10. Section 13(1)(j) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 is as under:-

> "**13.Eviction of tenants**-(1) Notwithstanding anything contained in any law or contract, no Court shall pass any decree; or make any order, in favour of a landlord, whether in execution of a decree or otherwise, evicting the tenant so long as he is ready and willing to pay rent therefor to the full extent allowable by this Act, unless it is satisfied-
>
> (a) ... ...
> (b) ... ...
> (c) ... ...
> (d) ... ...
> (e) ... ...
> (f) ... ...
> (g) ... .
> (h) ... .
> (i) ... .
> (j) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit; or
> (k) ... ."

11. Sub-clause (j) of sub-section (1) of Section 13 of the Act of 1950 clearly provides the ground for eviction of the tenant on tenant's failure to use the premises continuously for six months without reasonable cause "for the purpose for which they (premises) were let" to the tenant. In view of the above specific words used in the section, a decree for eviction can be passed in case it is proved that the suit shop though

has not been closed down but it has not been used for the purpose for which it was let out. The answer to the question no.1 is, therefore given as mentioned above.

12. The substantial question which requires detail consideration is substantial question no.5 and which is whether there was any material available on record on the basis of which the first appellate court could have reversed the finding recorded by the trial court on issue no.5 ?

13. It appears from the reasons given by the first appellate court that the first appellate court reversed the finding recorded by the trial court by ignoring the admission of the defendant made in the written statement as well as in his statement on oath before the court itself. The plaintiff in his plaint, as mentioned above, specifically pleaded that the suit shop was let out for business of printing and dyeing. The defendant in his written statement denied this fact by saying that “it is wrong that the suit shop was taken for the (business of) dyeing and printing” and thereafter, pleaded that “in the suit shop only work of printing is done and not of dyeing.” The defendant, therefore, specifically admitted that the suit shop was taken on rent only for the business of printing. In the first line of the cross-examination itself, the defendant admitted that he is doing the business of bed-sheets and

thereafter, he further admitted that he is doing the business of printing of Barmeri bed-sheets and thereafter admitted that the said work is not being done in the shop but the said work is done at his house. In view of the above, it is clear that the defendant himself admitted that stopped the business of printing in the shop. The above admissions of the defendant were ignored by the first appellate court and thereby, the first appellate court committed serious error of law affecting the finding recorded on issue no.5.

14. Though not pleaded by the defendant but assuming for the sake of argument that the defendant was doing the business of printing at his home and was doing the business of those very articles in the shop then after the statements of the witnesses of the plaintiff, it was the duty of the defendant to prove his business in the shop. The first appellate court again failed to read the statement of none else than the defendant himself which is clear from reasons recorded by the first appellate court where the first appellate court observed that it was not necessary for the defendant to keep account books of his business of dyeing and printing and since it was not necessary, therefore, non-production of account-books, cannot be a ground for drawing an adverse inference against the defendant. It appears that the first appellate court ignored the statement of the defendant himself where he clearly

admitted in cross-examination that he is keeping the bills of goods purchased. He is receiving the goods through bank-builty drawn on PNB (Punjab National Bank) and through S.B.B.J. (State Bank of Bikaner and Jaipur). The defendant nowhere stated in his statement that he was not keeping the account-books. He after saying that account books are not present, he stated in his statement that he has no reason for not producing the accounts in the court. It appears that the first appellate court picked up one sentence from the statement of the defendant and ignored other part of the statement of the defendant.

15. It is clear from the allegations of the plaintiff that negative burden was upon the plaintiff and that was to prove his allegation that the defendant is not doing the business in the suit shop since last more than six months. The trial court appreciated the evidence of the defendant and found that after the statements of the plaintiff's four witnesses, the defendant did not produce any documentary evidence like bills and account-books. The trial court also considered the statement of the defendant where he stated that he even does not know from whom he purchased the goods and for whom he is doing the business. Apart from above, it is clear from the statement and cross-examination of the defendant that he had no knowledge whether the registration of the shop was obtained or not.

16. In totality, the trial court accepted the evidence of the witnesses of the plaintiff and on the basis of the above evidence, found that after initial discharge of the burden, the onus shifted upon the defendant and the defendant who admitted that he was doing the business through the bank-builty, failed to produce any documentary evidence to prove his business itself much less of proving the business in the suit shop. The trial court found the defendant's witnesses D.W.2 Namonarayan and D.W.3 Vipatti Ram not worth reliance in view of the fact that their evidence was contradicted by the statement of the defendant himself because both the witnesses stated that the business of printing is running in the shop whereas that was just contrary to the statement of the defendant.

17. In view of the above, it is clear that there was no material available on the basis of which the first appellate court could have reversed the finding recorded by the trial court, rather it can be said that the first appellate court reversed the finding of fact recorded by the trial court by ignoring the admissions made by the defendant himself in the pleading as well as in his statement. The substantial question of law no.2 is answered in favour of the appellant-plaintiff as above.

18. In view of the above discussion, the appeal of the appellant

deserves to be allowed, hence allowed. The finding of the first appellate court recorded on issue no.5 and the judgment and decree passed by the first appellate court dated 15.5.1992 is set aside. The finding on issue no.5 recorded by the trial court is restored and the judgment and decree passed by the trial court dated 23.7.1987 is upheld.

(PRAKASH TATIA),J.

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